Supreme Court, U.S.
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No. ———

In the Supreme Court of the United States

SHANNON MILLER TURNER,
Petitioner,

v.

ROGER MILLER MUSIC, INC.,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

JAY S. BOWEN
Counsel of Record

AMY J. EVERHART
BOWEN RILEY WARNOCK & JACOBSON, PLC
1906 WEST END AVENUE
NASHVILLE, TN 37203
(615) 320-3700

Counsel for Petitioner

Becker Gallagher Legal Publishing, Inc. 800.890.5001

QUESTIONS PRESENTED

The Sixth Circuit Court of Appeals reversed the United States District Court for the Middle District of Tennessee and held that, when the copyright to an author's work is renewed after the author's death and that author is survived by a widow and children, the widow holds a fifty-percent share in the renewal copyright and the surviving children hold equal divided shares in the remaining fifty percent. The Sixth Circuit adopted the disproportionate allocation scheme of two other provisions of the Copyright Act, those addressing termination rights, and disregarded this Court's opinion in *De Sylva v. Ballentine*, 351 U.S. 570, 76 S.Ct. 974, 100 L.Ed. 1415 (1956), in which this Court held that the phrase "widow, widower or children" found in the renewal provision in the previous copyright statute created a class of persons who "succeed to the right of renewal as a class, and are each entitled to share in the renewal of the copyright." Judge Daughtrey dissented on the basis that the plain meaning of the controlling statute, 17 U.S.C. § 304(a)(1)(C), devolves rights to the widow and the children without specifying disproportionate shares.

The questions presented are as follows:

1. Whether the Sixth Circuit's decision that the widow of a deceased author holds a fifty-percent share in the author's renewal copyright and the surviving children hold equal divided shares in the remaining fifty percent departs from the accepted and usual course of judicial proceedings by improperly injecting meaning into Section 304(a)(1)(C) of the Copyright Act, supplanting the intent of Congress, and misapplying fundamental rules of statutory construction.

2. Whether the Sixth Circuit's decision that the widow of a deceased author holds a fifty-percent share in the author's renewal copyright and the surviving children hold equal divided shares in the remaining fifty percent conflicts with principles articulated by this Court in *De Sylva v. Ballentine*, 351 U.S. 570, 76 S. Ct. 974, 100 L. Ed. 1415 (1956), and the opinions of the Register of Copyrights, the preeminent treatise on copyright law and the only other published legal opinion on this issue of national importance.

PARTIES TO THE PROCEEDING

A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Petitioner/Defendant/Appellee: Shannon Miller Turner

Respondent/Defendant/Appellant: Roger Miller Music, Inc.

Plaintiff in the underlying District Court proceeding: Broadcast Music, Inc.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Shannon Miller Turner ("Turner"), respectfully petitions for a Writ of Certiorari to review the decision entered in this case by the United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit is reported at 396 F.3d 762 (6th Cir. 2005), and is reprinted in the Appendix ("App.") to this petition at App. B, 3-45. The Sixth Circuit's Order denying Turner's petition for panel rehearing and suggestion of rehearing *en banc* is reported at 2005 U.S. App. LEXIS 5623 (6th Cir. April 1, 2005), and is reprinted at App. A, 1-2. The judgment entered by the United States District Court for the Middle District of Tennessee (the "District Court") from which the Sixth Circuit appeal was taken is unreported and is reprinted at App. C, 46-56, and App. D, 57-58. The order entered by the United States District Court for the Middle District of Tennessee denying Respondent's Motion to Alter or Amend Judgment is unreported and is reprinted at App. E, 59-60.

STATEMENT OF JURISDICTION OF THE COURT

On January 28, 2005, the Sixth Circuit entered the opinion from which review is sought. (*See* App. B, 3-45). On April 1, 2005, the Sixth Circuit denied Turner's petition for panel rehearing and suggestion of rehearing *en banc*. (*See* App. A, 1-2). Turner invokes the jurisdiction of this Court pursuant to 28 U.S.C. § 1254(1) and seeks the issuance of the Writ of Certiorari pursuant to Supreme Court Rule 10(a) and (c). By holding that the widow of a deceased author holds a fifty-percent share in the author's renewal copyright and the

surviving children hold equal divided shares in the remaining fifty percent, the Sixth Circuit departed from the accepted and usual course of judicial proceedings and injected meaning into the unambiguous controlling provision of the Copyright Act in what the Dissenting Opinion described as "a clear case of judicial activism." The Sixth Circuit's decision calls for an exercise of this Court's supervisory powers.

Further, the Sixth Circuit has decided an important question of federal law that conflicts with principles articulated in this Court's decision in *De Sylva v. Ballentine*, 351 U.S. 570, 76 S. Ct. 974, 100 L. Ed. 1415 (1956), and the well-reasoned opinions of the Sixth Circuit Dissent; the District Court; the Register of Copyrights; the preeminent treatise on U.S. copyright law, *Nimmer on Copyright*; and the only other published decision on the issue, *Venegas-Hernandez v. Peer*, 283 F. Supp. 2d 491 (D. P.R. 2003). The practical effect of the Sixth Circuit's aberrant decision is to disrupt the expectancies and estate planning of authors nationwide.

RELEVANT STATUTORY PROVISION

(a) Copyrights in Their First Term on January 1, 1978. –

(1)(A) Any copyright, the first term of which is subsisting on January 1, 1978, shall endure for 28 years from the date it was originally secured.

(B) In the case of –

(i) any posthumous work or of any periodical, cyclopedic, or other composite work upon which

> the copyright was originally secured by the proprietor thereof, or
>
> (ii) any work copyrighted by a corporate body (otherwise than as assignee or licensee of the individual author) or by an employer for whom such work is made for hire,
>
> the proprietor of such copyright shall be entitled to a renewal and extension of the copyright in such work for the further term of 67 years.
>
> (C) In the case of any other copyrighted work, including a contribution by an individual author to a periodical or to a cyclopedic or other composite work –
>
> (i) the author of such work, if the author is still living,
>
> (ii) the widow, widower, or children of the author, if the author is not living,
>
> (iii) the author's executors, if such author, widow, widower, or children are not living, or
>
> (iv) the author's next of kin, in the absence of a will of the author,
>
> shall be entitled to a renewal and extension of the copyright in such work for a further term of 67 years.

17 U.S.C. § 304(a)(1).